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10 Scavetta, and G. Kelly

11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 **JACK L. MORRIS,**

16 Plaintiff,

17 v.

18 **ROBERT A. HOREL, WARDEN, et al.,**

19 Defendants.  
20

CV 07-6060 SI

**NOTICE OF MOTION AND  
MOTION THAT THE COURT  
STAY DISCOVERY UNTIL  
THE COMPLAINT IS  
SCREENED UNDER 28 U.S.C.  
§ 1915A**

21 TO PLAINTIFF JACK L. MORRIS, IN PRO SE:

22 PLEASE TAKE NOTICE that Defendants R. Horel, R. Rice, D. Hawkes, M. Pena, R.  
23 Moore, K. McGuyer, C. Scavetta, and G. Kelly (Defendants) request that this court stay all  
24 discovery propounded against them until the Complaint is screened under 28 U.S.C. § 1915A.

25 This motion is based on this notice of motion, the supporting memorandum of points and  
26 authorities, the Declaration of Sara Ugaz, the proposed order, and the Court's file in this action.

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Not. Mot. & Mot. Ct. Stay Disc. Pending Screening

*J. Morris v. Horel, et al.*  
CV 07-6060 SI

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 Plaintiff is currently a state inmate incarcerated at Pelican Bay State Prison. On August 20,  
4 2007, Plaintiff filed a civil-rights complaint in Del Norte County Superior Court, in which he  
5 claimed that various officials of Pelican Bay State Prison violated his rights. (*See generally*  
6 *Compl.*) On November 30, 2007, Defendants R. Horel, R. Rice, D. Hawkes, M. Pena, R. Moore,  
7 K. McGuyer, C. Scavetta, and G. Kelly removed the case to federal court and requested that the  
8 Court screen the Complaint under 28 U.S.C. § 1915A. (Docket Nos. 1, 2.) In so doing, the  
9 Court may dismiss any and all of Plaintiff's claims.

10 In the interim, Plaintiff has propounded nine sets of discovery on Defendants. (Decl. Ugaz  
11 ¶ 2.) On November 30, 2007, defense counsel asked Plaintiff if he would agree to stay discovery  
12 pending the Court's screening of his Complaint. (Decl. Ugaz ¶ 3.) Plaintiff refused to do so.  
13 (*Id.*)

14 Therefore, Defendants respectfully request that the Court stay discovery until it has screened  
15 Plaintiff's Complaint because Plaintiff's action may be dismissed in its entirety.

16 **ARGUMENT**

17 **DISCOVERY SHOULD BE STAYED PENDING THE**  
18 **COURT'S SCREENING OF PLAINTIFF'S COMPLAINT.**

19 Courts may issue protective orders to stay discovery for "good cause." Fed. R. Civ. P.  
20 26(c). Good cause exists when the "burden or expense of the proposed discovery outweighs its  
21 likely benefit taking into account the needs of the case . . . and the importance of the proposed  
22 discovery in resolving the issues." *Id.* at 26(b)(2).

23 Here, the Court should stay discovery because the Court may dismiss this entire cause of  
24 action or any of Plaintiff's individual claims under 28 U.S.C. § 1915A. Thus, a stay should issue  
25 to prevent the undue burden of Defendants having to supplement responses to any previous  
26 discovery, or respond to the new discovery served by Plaintiff.

27 Before seeking a protective order, parties should "confer or attempt to confer . . . in an effort  
28

1 to resolve the dispute without court action.” Fed. R. Civ. P. 26(c). In an attempt to comply with  
 2 that requirement, defense counsel spoke with Plaintiff on the phone on November 30, 2007 and  
 3 asked him if he was willing to stipulate to a stay of discovery. (Decl. Ugaz ¶ 3.) Plaintiff refused  
 4 to do so. (*Id.*)

### 5 CONCLUSION

6 Because, at this stage, any discovery propounded on Defendants is unduly burdensome,  
 7 Defendants respectfully requests that the Court stay all discovery, including discovery motions,  
 8 against them until the Court screens Plaintiff’s Complaint. After screening, Defendants request  
 9 thirty days to respond to any outstanding discovery. Alternatively, if the Court denies this  
 10 motion, Defendants request thirty days from the date of denial to respond to the discovery.

11  
 12 Dated: December 21, 2007

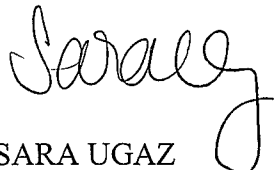
13 Respectfully submitted,

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 23 R. Moore, K. McGuyer, C. Scavetta, and G. Kelly

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **J. Morris v. Horel, et al.**

No.: **CV 07-6060 SI**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **December 26, 2007**, I served the attached

**NOTICE OF MOTION AND MOTION THAT THE COURT STAY DISCOVERY  
UNTIL THE COMPLAINT IS SCREENED UNDER 28 U.S.C. § 1915A**

**DECLARATION OF SARA UGAZ IN SUPPORT OF DEFENDANTS'  
MOTION THAT THE COURT STAY DISCOVERY UNTIL THE  
COMPLAINT IS SCREENED UNDER 28 U.S.C. § 1915A**

**[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION THAT  
THE COURT STAY DISCOVERY UNTIL THE COMPLAINT  
IS SCREENED UNDER 28 U.S.C. § 1915A**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Jack L. Morris, C-06409  
Pelican Bay State Prison  
P. O. Box 7500  
Crescent City, CA 95531-7500  
Pro Per**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **December 26, 2007**, at San Francisco, California.

M.M. Argarin  
Declarant

  
Signature